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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 566

In the Matter of the Estate of
ANTON BELEMECICH, Deceased

THE CONSUL GENERAL OF YUGOSLAVIA AT PITTSBURGH, PENNSYLVANIA, as Attorney-In-Fact for ANE BULIK, MATO BELEMECICH, ANE BELEMECICH KLJUNAK, MARIA BELEMECICH AND PERA BELEMECICH BOSCOVICH, *Petitioner*

v.

COMMONWEALTH OF PENNSYLVANIA

On Petition for a Writ of Certiorari to the Supreme Court of Pennsylvania

PETITIONER'S REPLY BRIEF

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I.

Kolovrat v. Oregon, 366 U.S. 187 (1961) Is Not Distinguishable, and Is Governing Here

1. Respondent's attempt to "distinguish" *Kolovrat* on the basis of a distinction between the Oregon and Pennsylvania statutes, pp. 9-17, is unavailing. It is, of course, true that Oregon's statute denied Yugoslav

residents and citizens all rights to acquire property by inheritance unless the conditions it stipulated were proven to be met in Yugoslavia, while Pennsylvania's denies them only the rights to possess and dispose of property they have acquired by inheritance, unless and until the conditions it stipulates are proven to be met in Yugoslavia. But this is a distinction without difference under Article II of the 1881 Convention in force and effect between the United States and Yugoslavia, which grants most favored nation treatment to Yugoslav citizens. Pet., App. C, p. 21a,

> In all that concerns the right of acquiring, possessing or disposing of every kind of property, real or personal * * *.

In *Kolovrat*, 386 U.S. at 196, this Court held that under this provision, Yugoslav citizens and residents, next-of-kin of Oregon decedents

> * * * have the same right to inherit their relatives' * * * property as they would if they were American citizens living in Oregon * * *.

Since the right to acquire property, by inheritance or otherwise, and the rights to possess and dispose of such property are granted by the Convention in identical terms, the extent of all such rights must necessarily be identical. Accordingly, the Yugoslav citizens and residents who are the sole beneficiaries of this Pennsylvania estate, have the same right to possess and dispose of the property they inherited from their relative as they would if they were American citizens living in Pennsylvania. Neither the conditions imposed by the court below, nor by Pennsylvania's statute, on the beneficiaries' rights to possess and dispose of such property would, by their terms, apply in the case of an American

citizen living in Pennsylvania. See Section 1, Pennsylvania Act of Assembly, July 28, 1953, 20 Purdon Penna. Stats. §1155; Pet., App. D, pp. 22a, 23a, which expressly provides that Section 2 of the act, applied here by the court below,[1] is reserved for use only in the case of a beneficiary "who is not a resident of the United States, its territories or possessions". It follows that under the 1881 Convention and *Kolovrat*, it cannot be applied in the case of these beneficiaries. Respondent's unsupported statement, p. 17, as to what a Pennsylvania court would "no doubt" do in the case of a resident, is purely speculative and hypothetical. Respondent refers to no case in which any such action was taken by a Pennsylvania court, and, in any event, the Pennsylvania statute is, by its own terms, limited in applicability to non-residents of the United States.

2. The annotation from the Lawyers' Edition report of *Kolovrat*, 6 L.Ed. 2d 1342, at 1344, which respondent quotes, p. 14, is *textually* word for word from page 32 of the Brief for the United States as Amicus Curiae, filed in *Kolovrat* v. *Oregon*, No. 102, October Term, 1960. But while the respondent adds emphasis to the word "*precludes*", by putting it in italics, which the

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[1] Funds paid into the Pennsylvania State Treasury under Section 2 of the act, are not held in trust, nor are they held for "safekeeping * * * in the steel-bound vaults of the Commonwealth of Pennsylvania", as the court below says. 411 Pa. at 508, 192 A. 2d at 741, Pet., App. A, p. 2a. For, as Section 4 of the act, 20 Purdon Penna. Stats. § 1158, Pet., App. D, p. 23a, shows, a decree directing payment out of the State Treasury to a beneficiary is "payable out of funds in the State Treasury *appropriated for that purpose*, with interest * * * of two percentum per annum * * *." [Emphasis supplied.] In these circumstances, the payment under the act of the beneficiaries' distributive shares into Pennsylvania's State Treasury without their consent, is hardly anything other than a forced loan.

Solicitor General did not, the Solicitor General emphasized the word "*any*", before the words "monetary controls", by putting it in italics, which the respondent does not, and the annotator did not, do. The result is startling. As emphasized by the respondent, the passage is meaningless, for the *only* consequence under the Oregon Act, where its conditions are not proven to be met, is that inheritance is precluded. What the Solicitor General was saying is that since the Bretton Woods Agreement, to which the United States was a party, permitted certain monetary controls, Oregon was not free to preclude inheritance by an alien solely because of the imposition by his country, also a party to the Agreement, of *any* monetary controls; in other words, that Oregon's statute was ineffective to preclude inheritance where the foreign country's monetary controls were permitted by the Agreement. That is, of course, wholly irrelevant here.

3. The "analogous situation" that respondent purports to see, pp. 15, 16, in *First National Bank* v. *California*, 262 U.S. 366 (1923) and *Anderson National Bank* v. *Luckett*, 321 U.S. 233 (1944) is wholly illusory. In *First National Bank*, it was held that a State statute was inapplicable to national banks, as improperly burdening federal instrumentalities, where the statute provided that all bank accounts which had been dormant for twenty years, "escheated" to the State. In *Anderson National Bank*, it was held that national banks were not improperly burdened by a State statute which required banks to report to the State accounts that had been dormant for specified periods, and provided for public notice to be made by the State of the presumed abandonment of such accounts, for the transfer of such accounts to the State after such notice if their owners

failed to claim them, for the subsequent assertion of claims to such accounts, with judicial review, and for vesting of title in the State only after a judicial determination that such accounts had in fact been abandoned, or were bona vacantia. As the Court points out in *Anderson National Bank*, the improper burden of the State statute considered in *First National Bank* was not that it provided for escheat, but that it interfered with the relations between national banks and their depositors by seizing and escheating dormant bank accounts regardless of whether they had been, in fact, abandoned or were bona vacantia. 321 U.S. 250-252. These cases, and the "situation" they present are patently irrelevant here.

Kolovrat is clearly indistinguishable, and it is wholly apposite. The principles it announces, as well as its authority, are governing here.

II.

State Laws With Respect to Inheritance and the Administration of Decedent Estates Must Yield to Treaties of the United States With Which They Are Inconsistent

1. Petitioner is fully in agreement with respondent, pp. 7, 8, 18, that State, not Federal law governs inheritance, and the administration of decedent estates. But, respondent overlooks that in such matters, as in others reserved to the States, rights granted by the United States by treaty, necessarily override inconsistent State law. *Kolovrat* v. *Oregon*, 366 U.S. 187, 190 (1961); *Clark* v. *Allen*, 331 U.S. 515, 517 (1947); *Santovincenzo* v. *Egan*, 284 U.S. 30, 40 (1931); *Nielsen* v. *Johnson*, 279 U.S. 47, 52 (1929); *Hauenstein* v. *Lynham*, 100 U.S. 483, 488, 489 (1880).

2. The respondent misplaces reliance, p. 17, on the misstatement apparently made in two Pennsylvania Orphans' Court opinions, of this Court's holding in *Rocca* v. *Thompson*, 223 U.S. 317 (1912), which they and the respondent also mis-cite. In *Rocca*, an 1878 treaty with Italy granted Italian consuls all the rights granted to consuls of the most favored nation, and a treaty with the Argentine granted Argentine consuls the right, in respect of Argentinians dying in the United States, "to *intervene* in the possession, administration, and judicial liquidation of the estate of the deceased, *conformably with the laws of the country*, for the benefit of the creditors and legal heirs". 223 U.S. at 326. This Court held, as a matter of construction, that the Argentine treaty granted consuls rights of *intervention* only, and, further, that the right claimed thereunder by an Italian consul, to administer the estate of a countryman to the exclusion of the person entitled to administration under State law, would not be conformable with the "laws of the country", i.e. local law. See *Santovincenzo* v. *Egan*, 284 U.S. 30, 36-38 (1931).

That the respondent's reliance on *Rocca* is, in any event, misplaced is emphasized by *Santovincenzo*. There an Italian consul, relying on the same provision of the 1878 treaty with Italy, claimed the right to take the estate of a countryman who died intestate without heirs or next-of-kin, to the exclusion of the State which, under State law, was entitled thereto. The consul relied on a treaty with Persia providing, in substance, that in the case of a Persian dying intestate in this country without heirs or next-of-kin, "his effects shall be delivered up to the consul * * * so that he may dispose of them in accordance with the laws of his country." 284 U.S. at 35, 36. This Court held that

the Italian consul, not the State, was entitled to the decedent's estate, pointing out that the Persian treaty, unlike the Argentine treaty with which *Rocca* was concerned, contained no stipulation that rights under it were to be exercised "conformably with the laws of the country." Nor is there any such provision in the 1881 Convention in force and effect between the United States and Yugoslavia. Pet., App. C, pp. 21a, 22a.

The Pennsylvania statute and the judgment below are, as we have seen, wholly inconsistent with the rights of petitioner's principals under Article II of the 1881 Convention, to possess, and to dispose of property acquired by them by inheritance. See, point I, *supra*. Pennsylvania's statute must yield, and the judgment below cannot be permitted to stand.

III.

Respondent's Restatement of the Question Presented, Misstates It, and Respondent Omits a Relevant Section of the Statute Involved

By its restatement of the question presented, p. 2, the respondent would make it appear that the concern of the court below was whether it was feasible successfully to effect remittances to the beneficiaries through ordinary channels, and that the action of the court below was intended only to assure the actual receipt by the beneficiaries of their distributive shares. But the court below made it clear that its concern was not that their distributive shares could not successfully be remitted to the beneficiaries, but rather, in view of supposed politico-economic conditions in Yugoslavia, that they could; and, further, that its action was intended to insure, not that the beneficiaries would receive their distributive shares, but, on the contrary, that they

would not, at least so long as the supposed conditions continue. Thus, the court below said, 411 Pa. at 514, 192 A. 2d at 744, Pet., App. A, p. 8a:

> * * * The heirs here have $70,000 coming to them. When the day arrives that the Iron Curtain of distrust and hostility shutting them off from the free world, melts and is molded into an open portal of understanding, good will and mutual respect, then the money left them by their brother and uncle, and which will have been safely kept for them by the Commonwealth of Pennsylvania, will be turned over to them, not only intact but with an augmentation of interest. And let it be hoped that this will happen while there is still healthful life in the beneficiaries so they may enjoy freely and to the utmost the munificence of their kinsman buried in the free land of America.

By such restatement, also, the respondent would make it appear that the court below made distribution to the beneficiaries, albeit in a special "manner * * * so as to insure" their receipt of their distributive shares. But no alchemy can transmute into distribution to the beneficiaries, the award of their legacies to the Pennsylvania Department of Revenue for payment into the Pennsylvania State Treasury. Pet., App. A, pp. 1a, 2a, 16a-18a. Nor is it other than a palpable fiction, as the passage last quoted from the opinion of the court below makes all too plain, to say, p. 2, that such awards and payments, even if purportedly "for the benefit of" the beneficiaries, will "insure that the heirs actually do receive their inheritance," or as the court below put it, "guarantee that its [i.e., the 1881 Convention's] provisions are upheld so that the beneficiaries will actually and not only technically or figuratively receive the amounts due them." 411 Pa. at 513, 192 A. 2d at 744, Pet., App. A, pp. 7a, 8a.

The question, then, is not whether Pennsylvania can take measures to assure the receipt by a Yugoslav beneficiary of his distributive share in a Pennsylvania estate, but, rather, whether Pennsylvania may deny a Yugoslav beneficiary his right, under the 1881 Convention, to possess and dispose of his distributive share in such an estate, to the same full extent as though he were an American citizen residing in Pennsylvania. *Kolovrat* v. *Oregon*, 366 U.S. 187, 196 (1961). The respondent, however, would not only restate, and at the same time misstate the question presented. It would also rewrite the act of the Pennsylvania Assembly at the root of the matter, p. 3, by deleting from it its first section, 20 Purdon Penna. Stats. § 1155, which, as already noted *supra* at p. 3, expressly provides that Section 2 of the act, applied here by the court below, is reserved for use only in the case of a beneficiary "who is not a resident of the United States, its territories or possessions". Pet., App. D, pp. 22a, 23a.

IV.

In Conclusion

Contrary to respondent's bald statement, p. 6, petitioner has nowhere asserted that the Orphans' Court was unaware of *Kolovrat*. Indeed, the petition emphasizes, pp. 5, 6, that that court's attention was expressly directed to *Kolovrat* by the petitioner by argument, brief and exception. Nevertheless, *Kolovrat* is not as much as mentioned in either of its opinions. Pet., App. B, pp. 11a-20a. Accordingly, petitioner is not privileged to know whether the Orphans' Court considered *Kolovrat* inapplicable for the reasons assigned by respondent, p. 6, or for any other reasons, or whether it just gave *Kolovrat* no consideration at all. But, whether it did one or the other is without

relevance here. Nor is it relevant, as respondent seems to think, pp. 8, 9, that this Court declined review in *Kalmane* v. *Green*, 346 U.S. 802 (1935) and *Ioannou* v. *New York*, 371 U.S. 30 (1962). While those cases arose under a New York statute not dissimilar from Pennsylvania's, Pet., p. 15, in neither was there any treaty of the United States involved.

Furthermore, in the administration of its statute, New York, unlike Pennsylvania, adheres strictly to federal foreign policy as indicated by the action of the Secretary of the Treasury under the analogous federal statute. Pet., pp. 16-18.

Respondent's resort to a plethora of Orphans' Court opinions, pp. 16-18, for the purposes of Pennsylvania's statute, and the duties of Orphans' Courts, can avail it nothing. For, Pennsylvania's Supreme Court, in its opinion in this case, Pet., App. A, pp. 1a-8a, has spoken authoritatively as to the purposes of the statute, and the concern here is not with the duties of Pennsylvania's Orphans' Courts under Pennsylvania's laws, but with the rights guaranteed to petitioner's principals by a treaty of the United States.

The petition should be granted.

Respectfully submitted,

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